

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT  
March 23, 2017

The Greenville Board of Adjustment met on the above date at 6:00 PM in Council Chambers of City Hall.

Justin Mullarkey, Chairman-*	
Bill Johnson, Co-Chair *	Claye Frank *
Kevin Faison *	Thomas Taft, Jr. X
Michael Glenn *	Rodney Bullock *
Rich Winkler *	Jim Watts *
James Moretz *	Brad Guth X

The members present are denoted by an “\*” and those absent are denoted by an “X”.

VOTING MEMBERS: Mullarkey, Johnson, Frank, Faison, Watts, Moretz, Winkler  
Item 1 ONLY: Frank, Johnson, Moretz, Faison, Bullock

**OTHERS PRESENT:**

Ms. Elizabeth Blount, Planner II	Ms. Cathy Meyer, Civil Engineer
Mr. Donald Phillips, Assistant City Attorney	Mr. Ben Griffith, Community Development Director
Mr. Thomas Weitnauer, Chief Planner	Mr. Kelvin Thomas, Communications Technician

Attorney Phillips, regarding agenda item 1-Debbie and Jackie James, stated that Sec 4-5 of the Rules of Procedure states “No Board member shall vote on any matter deciding an application or appeal, unless he shall have attended the public hearing on that application or appeal.” The Board of Adjustment meeting on February 23, 2017 after the public hearing, continued the request by Debbie and Jackie James so that the applicant could meet with Staff to consider an alternative fencing option that was more affordable. Therefore only the board members present tonight who attended the public hearing on February 23, 2017 are allowed to vote on the matter tonight. Those in attendance were: Mr. Frank, Mr. Johnson, Mr. Moretz, Mr. Faison, Mr. Glenn and Mr. Bullock. At the February 23, 2017 meeting Mr. Glenn was recused from participation and voting. Similarly tonight Mr. Glenn would need to recuse himself again. Therefore the voting members for tonight’s agenda item 1 are: Mr. Frank, Mr. Johnson, Mr. Moretz, Mr. Faison and Mr. Bullock. Chairman Mullarkey will still Chair the meeting. He suggested that the time of the public hearing of agenda item 1, the voting members for this item should vote to re-open the public hearing.

**MINUTES**

Mr. Faison made a motion to approve the February 23, 2017 minutes as presented, Mr. Frank seconded and the motion passed unanimously.

**OLD BUSINESS**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY DEBBIE AND JACKIE JAMES**  
**-APPROVED**

The applicants, Debbie and Jackie James, desire to amend a special use permit to operate an indoor and outdoor flea market pursuant to Appendix A, Use (10)z. of the Greenville City Code. The proposed use is located at 1114 N. Greene Street. The property is further identified as being tax parcel numbers 18504, 24007, 28153, and 82436.

Mr. Glenn requested to be recused from the public hearing because he has an interest in an adjacent property to the request and he recused himself from the applicant's first special use permit request.

**Mr. Claye made a motion to recuse Mr. Michael Glenn, seconded by Mr. Faison and the motion passed unanimously.**

**Motion to open public comments by Mr. Johnson, second by Mr. Faison, and the motion passed unanimously.**

Attorney Phillips reviewed information. As stated on pages 2 to 3 of the Meeting Handout available to the Public, the EVIDENCE TO BE CONSIDERED BY THE BOARD OF ADJUSTMENT IS AS FOLLOWS:

A. The Board of Adjustment is a quasi-judicial body that makes a decision concerning an application, petition or appeal based on the evidence presented by those in favor as well as those in opposition.

B. The members of the Board of Adjustment are lay persons and as such, the rules of evidence that are followed in a court are relaxed for cases heard before this body.

C. Though the rules of evidence are relaxed, it does not mean they are ignored. Only evidence that is material, competent, and substantial will be considered and may be used by the Board in its decision making process.

D. The Board may not consider, nor is it admissible to present or offer affidavits, letters or other writings in support of or in opposition to a matter before the Board unless the person who prepared the writing is testifying. These writings are considered hearsay.

1. Statements by a person such as "In my opinion, the application will create a traffic hazard," is not an admissible opinion and may not be considered by the Board.

a. However, such an opinion may be admissible if it is made by an expert or a person who is qualified to give opinions concerning traffic hazards, is making a presentation to the Board concerning his or her investigation and the basis for his or her conclusion in the report.

b. A lay person can give an opinion but he or she also must present facts to show how the proposal affects his or her piece of property specifically and not just in a general way.

2. A statement that another person who is not present and not testifying either supports or doesn't support the petitioner or application is hearsay and is not admissible.

3. The same rule applies to both the applicant and those in opposition.

Pursuant to North Carolina General Statute 160A-388 and Section 4 of the Board of Adjustment's Rules of

Procedure:

- 4-3. No member of the Board of Adjustment shall participate in either the discussion or vote on any special use permit, variance, or appeal from an administrative officer's decision in any manner that would violate the affected persons' constitutional right to a fair and impartial decision maker. Prohibited conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter and not willing to consider changing his or her mind; and undisclosed ex parte communications with the person before the Board, any witnesses, staff, or other Board members. Decisions on either a request for recusal by a member or objections by a person appearing before the Board shall be decided by a simple majority vote.
- 4-4. No Board Member shall take part in the hearing, consideration, or determination of any matter in which that Board Member is involved or has a financial or personal interest. Personal interest shall be defined as having a family member involved in the project under consideration, a neighborhood association involvement where a Board Member is on the governing body of such association, or where the Board Member is involved in a conflict or dispute with the applicant on a matter unrelated to the application. If a Board Member has such a conflict, he shall declare the conflict and request to be excused from voting on the issue. A majority vote of the remaining members present shall be required to excuse the member.
- 4-5. No Board member shall vote on any matter deciding an application or appeal, unless he shall have attended the public hearing on that application or appeal.
- 4-6. No Board member shall discuss any case with any parties in interest prior to the public hearing on that case, provided however, that members may receive and/or seek information pertaining to the case from any other members of the Board.

If a Board member has had an ex parte communication that also needs to be disclosed at this time.

Ms. Blount stated the request was to amend a special use permit and was continued from last month's meeting. She delineated the area on a map. The property is located in the northern portion of the City's jurisdiction and is bounded by N. Greene Street, E. Dudley Street, N. Pitt Street and Martin Street.

**Zoning of Property:** CH (Heavy Commercial)

**Surrounding Zoning:**

- North: CDF (Downtown Commercial Fringe)
- South: CH (Heavy Commercial) & CDF (Downtown Commercial Fringe)
- East: CH (Heavy Commercial) & R6 (Residential)
- West: R6 (Residential) & IU (Unoffensive Industry)

**Surrounding Development:**

- North: El Azador Mexican Restaurant, Vacant Lot
- South: Affordabond Bail Bonds Office, Vacant Lot

East: TransEast New Growth Design Warehouses, Vacant Lot  
West: Single Family Residential, Railroad Tracks

### **Description of Property:**

The property is 2.26 acres in size and contains a 25,164 square-foot, one-story commercial building with a laundromat, salon and indoor flea market. It contains approximately 355 feet of frontage along N. Greene Street. The Board approved an indoor/outdoor flea market in December 2016 with several conditions. The amended request is to eliminate the fencing condition for the outdoor vendors.

### **History of Request**

- The original application was submitted in October 19, 2016. After the applicant received a copy of the findings of facts, she submitted an addendum on November 16, 2016. Since the addendum included additional days and was submitted the day before the meeting, staff needed more time for review. The applicant was sick the day before the meeting and agreed to continue until December BOA meeting. Staff met with the applicant and her surveyor on December 13, 2016. Both agreed to the recommended conditions. The same conditions were presented to the board at the December 16, 2016 meeting. Both the applicant and the surveyor spoke and stated they approved of the recommended conditions. The board approved the request with the conditions. On January 9, 2017, the applicant and her spouse met with staff to discuss removing the fence requirement. Staff explained the process of amending special use permits and the applicant decided to submit an amended request on January 25, 2017 for the February BOA meeting. The request was continued from the February Board of Adjustment meeting in order for the applicant to meet with staff concerning an affordable alternative to the fencing. Staff met with the applicant and spouse on March 1 and discussed alternatives to the fence. The applicant submitted an amended application on March 2. Staff met with the applicants on March 20 to review the Findings of Facts and answer questions.

### **Comprehensive Plan:**

The property is located within the Commercial character type as designated by the Horizon 2026 Greenville Community Plan. The proposed use is in compliance with the Future Land Use Plan which recommends commercial development for the subject property.

### **Notice:**

Notice was mailed to the adjoining property owners on March 9, 2017. Notice of the public hearing was published in the Daily Reflector on March 13 and March 20, 2017.

### **Staff Recommended Conditions:**

- No temporary coverings (tents, etc...) allowed to remain erected overnight
- No torn or damaged coverings (tents, etc...) may be used.
- Operating hours shall be limited to daylight hours.

- The property shall be cleaned of all trash and debris daily.
- No outdoor sales allowed outside of proposed designated outdoor vendor stall area. Selling from vehicles or trailers is prohibited.
- Outdoor vendor setup shall not be oriented towards public streets, setup must be oriented towards the interior of the property
- An inspection of the outdoor vendor area must be approved by staff prior to commencement of operation
- Individual vendor signs shall not be permitted
- No parking on unimproved surfaces, in vendor area or along all adjacent road right-of-ways
- Parking spaces shall be striped or have wheel stops
- No outdoor amplified sound shall be permitted
- Outdoor garbage/trash containers and recycling centers shall be provided and enclosed on three sides by a complete visual screen consisting of a fence, vegetation or combination thereof with approved material and size in accordance with the zoning ordinance.
- Existing food truck shall operate in a stall in a designated area.

Ms. Blount stated the proposed enclosed vendor area conditions, per the applicant's suggestion in which Staff approved are:

- The perimeter of the proposed outdoor vendor areas shall be enclosed with fencing as hereinafter described per the applicant. There shall be wood posts of a minimum 6"x6" in diameter and at least four (4) feet tall. Each post shall be installed twenty (20) feet apart by digging a hole and securing each post by cement. Two (2) rows of 3/16" yellow coated metal chains shall be between each post and secured reasonably tight with latch hooks. The sag in the chains shall be no more than four inches. The bottom row of chain shall be located 16-24 inches above the ground level and the top row of chain shall be a minimum of 36 inches above ground level. Said fencing shall remain connected at all times during vendor operation and nonoperational hours.
- Fencing shall remain free of merchandise and signage.
- Individual outdoor vendor stalls must be clearly delineated as hereinafter described per the applicant. The interior of the vendor stalls will be delineated by a concrete standard brick (8"x4"x2") which will be placed in the ground by digging out an area for each brick. Each vendor stall shall be marked by painting a line in between each stall to clearly delineate each stall.
- All site modifications and parking requirements shall be in compliance with approved site plan 16-83 and completed no later than 30 consecutive days from the approval date of the special use permit.
- All fencing and delineation of the outdoor vendor stall area shall be completed no later than 60 consecutive days from the approval date of the special use permit.

### **Justification for Recommended Conditions**

Staff recommends that the Board of Adjustment finds that the screening requirement for the outdoor vendor stalls be required based upon the following four City Code subsections:

City Code § 9-4-81(C) *“Health and safety. The proposed use will not adversely affect the health and safety of persons...Such health and safety considerations include, but are not limited to the following...(4) The visibility afforded to both pedestrians and operators of motor vehicles both on-site and off-site”; (5) The reasonably anticipated increase in vehicular traffic...”; (6) The anticipated, existing and designed vehicular and pedestrian movements both on-site and off-site.*

City Code § 9-4-81(F) *“Injury to properties or improvements. The proposed use will not injure, by value or otherwise, adjoining or abutting property or public improvements in the neighborhood”;*

City Code § 9-4-81(G) *“Nuisance or hazard. The proposed use will not constitute a nuisance...Such nuisance...considerations include, but are not limited to the following...(1) The number of persons who can reasonably be expected to frequent or attend...(3) The visual impact of the proposed use”; (4) The method of operation...and*

City Code § 9-4-82 *“providing that the BOA may impose additional conditions, restrictions, and standards as may be necessary to protect the value and use of property in the general neighborhood.”*

The rationale for this recommendation based on the three City Code citations is for the following reasons:

- 1) The nature of flea markets, having various clothing and household items randomly displayed for purchase versus commercially-conventional displays of a random nature of inventory, does not project an attractive image which staff considers promotes a negative visual impact on the neighborhood;
- 2) The screening and delineation promotes fairness and creates uniform spaces for the vendors to sell their wares; and
- 3) The screening will also differentiate the vendor stalls from the designated parking area and assist in public safety by providing a barrier for pedestrian and vehicular traffic.

**Other Comments:**

The proposed project must still meet all related NC State fire and building codes, NC Department of Revenue Sales and Use Tax Technical Bulletin Section 34-7 Flea Markets, and NC General Statutes § 66-255 and § 105-164.4(c) prior to occupancy.

The applicant shall be responsible for monitoring outside vendor areas to ensure no activity outside of normal operating hours.

**Staff Recommendation:**

Planning staff is of the opinion that the request can meet all the development standards and recommended conditions required for issuance of a special use permit upon proper findings by the Board.

Mr. Faison asked for clarity if the 30 days was to put parking in place and 60 days for the stalls.

Ms. Blount stated yes and that at a maximum everything needs to be completed in 60 days.

Chairman Mullarkey asked if the parking spaces had the option of being striped or having wheel stops.

Ms. Blount stated yes.

Chairman Mullarkey asked for clarification regarding materials used for parking surfaces.

Ms. Blount stated there are various materials that can be used and can discuss that with the applicant.

Ms. Debbie James, applicant, spoke in favor of the request. She stated she agreed with Ms. Blount's statements. She stated they had very good meetings with Staff. She had a sample of the chain which will be used for fencing. There will be two rows of changes hooked with latch hooks to posts.

Mr. Moretz asked if a cost assessment was done.

Ms. James stated yes and that it meets their needs.

No one spoke in opposition of the request.

Vice-Chair Johnson asked for Staff Recommendation.

Ms. Blount stated Staff has no objections to the request with the recommended conditions.

Vice Chair Johnson closed the public hearing and opened for board discussion.

No board discussion made.

Vice-Chair Johnson read the required findings criteria. No objections.

**Mr. Faison made a motion to adopt the findings of facts, Mr. Frank seconded and the motion passed unanimously.**

**Mr. Frank made a motion to approve the petition with the conditions, Mr. Faison seconded and the motion passed unanimously.**

Michael Glenn returned to the Board.

### **NEW BUSINESS**

### **PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY SHARIF HATOUN AND TRAVIS HIXON - APPROVED**

The applicants, Sharif Hatoun and Travis Hixon, desire a special use permit to expand directly above the roof of a nonconforming use for an open air deck pursuant to Title 9, Chapter 4, Article C, Section 9-4-29 (E) of the Greenville City Code. The proposed use is located at 511 Cotanche Street. The property is further identified as



being tax parcel number 11036.

Ms. Blount stated delineated the area on a map. She stated that the property is located in the center portion of the City's jurisdiction. It is located in the Greenville Commercial Historical District.

**Zoning of Property:** CD (Downtown Commercial)

**Surrounding Zoning:**

North: CD (Downtown Commercial)

South: CD (Downtown Commercial)

East: CD (Downtown Commercial)

West: CD (Downtown Commercial)

**Surrounding Development:**

North: Vacant building, Smoke Out, Omars, Cape Fear Tattoo, Catalog Connection

South: Pantana Bob's, Varsity Barber Shop & Styling, and Mac Billiards

East: City of Greenville Public Parking Lot

West: ECU School of Bartending & Home Brewers Supply Shop and University Book Exchange

**Description of Property:**

The subject property, Still Life, contains a 2,676 square foot building and has approximately 39 feet of frontage along Cotanche Street with a total lot area of 0.11 acres. The applicant desires to expand above the roof of a nonconforming use for a roof top open air deck. Still Life is a nonconforming use because it does not comply with 500 foot separation requirement for clubs. The special use permit was granted to Still Life in 2006. Two ordinances were adopted by City Council in 2010 which resulted in making the establishment a grandfathered nonconforming land use. A text amendment was adopted by City Council on September 8, 2016 permitting the nonconforming use in CD commercial zoning district to expand directly above the roof of an existing area devoted to the same type of nonconforming use.

**Comprehensive Plan:**

The property is located within the Uptown Core character type as designated by the Horizons 2026 Greenville Community Plan. The proposed use is in compliance with the Future Land Use Plan which recommends downtown commercial development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on March 9, 2017. Notice of the public hearing was published in the Daily Reflector on March 13 and March 20, 2017.

**Related Zoning Ordinance Regulations:**



Definition:

*Nonconformity.* Any dimensional, area, use or other situation, which does not comply with the requirements, standards or conditions set forth by the Zoning Ordinance, whether existing on the effective date of this chapter or following any amendment thereto.

Specific Criteria:

Section 9-4-29 (E)

(E) Within the CD downtown commercial zoning district, a nonconforming use that may be continued in accordance with the provisions of section 9-4-28 will be allowed to expand directly above the roof of existing areas devoted to the same type of nonconforming use and shall not be subject to the provisions of subsection (A)(1) above relating to said expansion, provided that:

- (1) The open air deck is directly above the nonconforming use and does not have an intervening story between the existing nonconforming use and the open air deck;
  - (2) The addition does not create additional nonconformities or increase the extent of existing nonconformities with respect to dimensional standards, setback requirements, height limits, and/or parking requirements;
  - (3) Improvements to the existing building are made so that it is in full compliance with all current North Carolina Building Code requirements as a result of the additional functional square footage and, as such, building permit applicants may be required, as determined necessary by the building inspector, to provide construction drawings that demonstrate compliance with increased structural loads through a structural analysis prepared and sealed by a professional engineer, occupant loads, egress loads including exterior stairs and/or ramps used as a means of egress, plumbing facility loads, interior and roof deck finish material information, sprinkler loads, fire alarm system and additional specific requirements pertinent to the building as a result of the addition;
  - (4) New and reconfigured stairways and landings constructed to serve new open air decks upon a roof shall be allowed to be constructed within the property lines of the nonconforming use, regardless whether they are within or outside of a building's exterior walls;
  - (5) It is permissible to reconstruct existing roofs to support open air decks, regardless whether existing roofs enclose conditioned buildings or are located above nonconditioned areas that are open on the side(s);
  - (6) Enclosed areas on open air roof decks shall be limited to mechanical rooms, HVAC equipment, bathrooms and janitor closets;
  - (7) A special use permit is approved by the Board of Adjustment for the addition;
- and

- (8) Notwithstanding the foregoing, the nonconforming use, including the addition, remains as a nonconforming use in accordance with the provisions of Article C of the Greenville City Code.

**Staff Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy. Applicant shall obtain all proper permits and have all respective inspections performed and approved.

The open air deck shall comply with the specific criteria of the Greenville City Code for public or private clubs.

**Staff Recommendation:**

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Chairman Mullarkey opened the public hearing.

Mr. Sharif Hatoun, applicant and owner, spoke in favor of the request. He has been trying to go vertical with his property for a long time. He worked with Staff to get the ordinance changed. He provided a picture of what the property will look like with the roof top addition. He stated there would be a lounge seating area with fire pits and a martini bar and another sports bar area with televisions.

Chairman Mullarkey asked how many square feet is the upper level.

Mr. Hatoun stated it will have the same footprint as the main original floor.

Chairman Mullarkey asked what the fencing material would be made of.

Mr. Hatoun stated he didn't remember the name but it was an all-weather resistant material.

Mr. Watts asked what type of flooring material will be used and what about the drainage.

Mr. Hatoun stated a new roof structure will be built as floating/raised above the existing roof. The drainage will be tapped and not just dump out into the alley.

Mr. Faison asked if there will be retractable awnings.

Mr. Hatoun stated yes. They also are having sprinklers installed in the entire building.

Mr. Watts asked that the flooring needs to prevent falls.

Mr. Hatoun stated he is working with a roofer from Raleigh who specializes in this type of roofing.

Chairman Mullarkey stated that the applicant will have to get permits and follow all building codes.

No one spoke in opposition of the request.

Chairman Mullarkey asked for Staff Recommendation.

Ms. Blount stated Staff has no objection to the request.

Chairman Mullarkey closed the public hearing and opened for board discussion.

No board discussion made.

Chairman Mullarkey called for motion to approve the application.

**Mr. Winkler made a motion to approve the petition, Mr. Johnson seconded and the motion passed unanimously.**

**PUBLIC HEARING ON A REQUEST FOR A VARIANCE BY GRADY WHITE BOATS, INC – APPROVED**

The applicant, Grady White Boats, desires a variance from the required finished floor elevation to be constructed below the required base flood elevation for structures located in the 100 year floodplain, pursuant to Title 9, Chapter 6, Section 9-6-2 and 9-6-4 of the Flood Damage Prevention Ordinance in the Greenville City Code. The proposed use is located at 5121 Martin Luther King Jr. Highway. The property is further identified as being tax parcel numbers 16572, 34502, and 27321.

Attorney Phillips stated that a 4/5ths majority vote is required for a variance approval. He stated that means 6 out of the 7 voting members have to agree on the variance request.

Ms. Blount delineated the area on the map. She stated that the property is located in the northern portion of the City and in the City's ETJ (extra territorial jurisdiction).

**Reason for Request:**

The applicant seeks relief from the regulatory flood protection elevation requirement as set forth in the FLOOD DAMAGE PREVENTION ORDINANCE.

The request is to reduce the regulatory flood protection elevation from two (2) feet above the Base Flood Elevation (BFE) to 0.60 feet above the BFE for the Finished Floor Elevation (FFE) to match the existing manufacturing plant's finished floor elevation.

**Zoning of Property: I (Industry)**

**Surrounding Zoning:**

North: I (Industry) and IU (Unoffensive Industry)  
South: I (Industry)  
East: I (Industry)  
West: I (Industry) and IU (Unoffensive Industry)

**Surrounding Development:**

North: NACCO Material Handling and a vacant lot  
South: TriEst Ag Group, Inc., Hendrix and Gail and a vacant lot  
East: Vacant lots  
West: Vacant lots

**Description of Property:**

The subject property contains five commercial buildings totaling 165,427 square feet of heated space. The total lot area is 34.07 acres in size and has 2,222 feet of frontage along Martin Luther King Jr. Highway. The applicant desires to add an 85,000 square foot expansion to the existing Grady White facility. A portion of the addition will be located in the Flood Hazard Area.

**Comprehensive Plan:**

The property is located within the Industrial/Logistics character type as designated by the Horizons 2026 Greenville Community Plan. The proposed use is in compliance with the Future Land Use Plan which recommends industrial development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on March 9, 2017. Notice of the public hearing was published in the Daily Reflector on March 13 and March 20, 2017.

**Variance Criteria:**

Variances from the provisions of the Flood Damage Prevention Ordinance are heard and decided by the Board of Adjustment. **The findings of facts for a variance from any provision of the Flood Damage Prevention Ordinance are different than the typical criteria used by the Board of Adjustments.**

The Board must find in favor of the applicant on each criteria in order to grant the requested variance.

- (a) The variance will not make the structure in violation of other federal, state or local laws, regulations or ordinances.
  
- (b) The variance is the minimum necessary, considering the flood hazard, to afford relief.

(c) Variances shall only be issued upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the variance would result in exceptional hardship; and
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or chapters.

Below are the pertinent sections of the Flood Damage Prevention Ordinance. They include the section the applicant is seeking relief and the administration section specific to the issuance of variances by the Board of Adjustment.

**The Applicant is seeking relief of**

**SEC. 9-6-2 DEFINITIONS**

Regulatory flood protection elevation. The elevation to which all structures and other development located within the special flood hazard areas must be elevated or flood proofed, if nonresidential.

- (1) In “Special Flood Hazard Areas” where base flood elevations (BFEs) have been determined, this elevation shall be at least the BFE plus two (2) feet for all structures and other development except manufactured homes.

**The Administration Section on the issuance of variances.**

**SEC. 9-6-4 ADMINISTRATION**

(G) Variances.

(1) The Board of Adjustment as established by the city shall hear and decide requests for variances from the requirements of this chapter.

(2) Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal the decision to the Superior Court as provided in G.S. Chapter 7A of the North Carolina General Statutes.

(3) Variance may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(4) In passing upon such applications for variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter and:

- (a) The danger that materials may be swept onto other lands to the injury of others;
- (b) The danger to life and property due to flooding or erosion damage;
- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity to the facility of a waterfront location, where applicable;

- (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (g) The compatibility of the proposed use with existing and anticipated development;
- (h) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
- (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(5) The findings listed above shall be submitted to the Board of Adjustment, in writing, and included in the application for a variance.

(6) Upon consideration of the factors listed above, and the purposes of this chapter, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(7) Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.

(8) Conditions for variances:

(a) Variances may not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances.

(b) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(c) Variances shall only be issued upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the variance would result in exceptional hardship; and
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or chapters.

(d) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.

(e) The Local Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

Ms. Cathy Meyer of the Engineering Division of Public Works presented Staff information.

**Staff Comments:**

The existing main facility buildings, being buildings 1-5, were removed from the Special Flood Hazard Area (SFHA) by FEMA on May 6, 2004, by the Letter of Map Amendment (LOMA), Case Number 04-04-4324A, and revalidated on July 8, 2014. The LOMA is still effective.

In preparation of the site plan, representative for the property owner met with City Staff to inquire about a reduction to the finish floor elevation requirement in the Flood Damage Prevention Ordinance. The ordinance requires the finish floor of any habitable structure constructed on this property in the SFHA to be elevated to the Base Flood Elevations (BFEs) plus two (2) feet. The base flood elevation is 24.7 feet (NAVD88). The existing Finished Flood Elevation (FFE) of the main facility is 25.8 feet being 1.1 feet above the base flood elevation. The proposed warehouse elevation is 24.97 feet.

The representatives stated if the variance is granted, a LOMA will be applied for after construction to request FEMA to remove the new structures from the SFHA.

Beside a variance, the owner does have the option to apply to FEMA for a Conditional Letter of Map Amendment (CLOMA) before the start of construction. This process could take from 90-180+ days for approval from FEMA.

**Staff Recommendation:**

Staff has no issue with the variance request as submitted.

Ms. Meyer stated the property is a production facility and not a housing facility and therefore Staff does not foresee any problems and has no objection.

Mr. Winkler asked if the variance is approved would the LOMA be approved.

Ms. Meyer stated no, it is done by FEMA.

Mr. Watts asked what type of materials would be in run off conditions and shouldn't that be considered first.

Ms. Meyer stated with this amount of impervious coverage they would have to do a site plan. That is where erosion and pollution control is looked at and requirements must be met. If a variance is not granted then there is no use in spending money in advance for a site plan that would not be approved. The variance is the first step. The location is not residential in use. The pollution control will be reviewed appropriately.

Chairman Mullarkey stated that the variance is the first step in the process before site plan and building permits.

Mr. Watts asked if the applicant would come back to the Board and how is compliance monitored.

Ms. Meyer stated that from the City Engineering side, all steps are applied for and approved and once everything is done correctly, a Certificate of Occupancy is issued.



Mr. Weitnauer stated the checks and balances are the site plan with a technical review committee where several agencies review and approve the site plan. Then building permits are issued and inspections are conducted throughout construction and then a Certificate of Occupancy is issued. These steps don't come back to the Board.

Mr. Faison stated a possible reason for the question is that a site plan is normally attached with the special use application information.

Ms. Blount stated there was a site plan in the packets.

Mr. Glenn stated the information in the request stated the property was no impacted by Hurricane Matthew (October 2016).

Mr. Watts asked what legal exposure does the City open itself to for granting a variance and the property does suffer from flooding.

Attorney Phillips stated the Board is doing their due diligence now. The exposure is the same for granting a variance or a special use permit. The purpose of the Board is to address those matters. Anyone can be sued but there are safeguards in place to limit exposure.

Mr. Watts asked if any other federal agency have final approval on this plan.

Ms. Meyer stated she was unsure. Storm water management requirements must be fulfilled.

Mr. Griffith stated FEMA will look at what they do before and after and how it impacts the area. FEMA will look at it for the LOMA. It is up to the applicant to follow FEMA's instructions.

Chairman Mullarkey opened the public hearing.

Mr. Jim Walker, representative for the applicant, spoke in favor. The owner proposes to build a 50,000 square-foot finishing area for a new boat line and a 35,000 square-foot warehouse for storage. The current floor area is about 374,000 square feet. The current facility is located outside of the flood hazard area. If the flood elevation was not increased to 2 feet above BFE, there would be no reason for a variance. They have had many additions to the facility over the years. The facility is concrete floor used for manufacturing. In order to move the boats around through the finishing process, a level floor surface is needed for the boats and equipment. If the variance is approved they will do construction design and a site plan and submit it to the City. The addition to the facility will add about 40 new jobs in the near future. They do not anticipate any traffic problems. The required parking spaces is 258 and they have 414. No additional impervious surface will create additional water run-off. Following construction, they will apply for the LOMA with FEMA.

Mr. Watts asked what happens if FEMA doesn't approve their LOMA request.

Mr. Walker stated they will need to pay flood insurance. He stated the City/County adopted an ordinance for two (2) feet above BFE due to the many residential structures in the flood area.

Mr. Watts asked if there was an issue at the property during hurricane Floyd.

Mr. Walker stated no.

Mr. Watts asked if soil testing and water table testing been completed.

Mr. Walker stated there never has been an issue with the existing building.

Mr. Jim Harden spoke in favor of the request. An employee with Grady White for over 30 years. The objective is to build boats efficiently and safely. They have a pollution/storm water prevention plan in place.

Mr. Brad Hufford with the Pitt County Development Commission spoke in favor of the request. He supports the request.

No one spoke in opposition of the request.

Chairman Mullarkey asked for Staff Recommendation.

Ms. Blount stated Staff has no objection to the request.

Chairman Mullarkey closed the public hearing and opened for Board discussion.

Chairman Mullarkey read the variance required findings criteria and Sec 9-6-4 (G) 8 as contained in the Staff report. No objections.

**Mr. Johnson made a motion to adopt the findings of facts, Mr. Winkler seconded and the motion passed unanimously.**

**Mr. Frank made a motion to approve the petition, Mr. Moretz seconded and the motion passed unanimously.**

**With no further business, Mr. Winkler made a motion to adjourn, Mr. Frank seconded, and the motion was passed unanimously. Meeting adjourned at 7:18 p.m.**

Respectfully Submitted,

Elizabeth Blount  
Planner II